# RECENT CASES.

BANKRUPTCY — PROVABLE CLAIMS — RIGHTS OF SECURED CREDITOR. — After the filing of the petition in bankruptcy a creditor of the bankrupt liquidated his security, which was not sufficient to satisfy his whole claim. *Held*, that he cannot satisfy the claim for interest accruing between the date of the petition and the date of the liquidation of the security, and prove for the balance. *In re Kessler & Co.*, 171 Fed. 751 (Dist. Ct., S. D. N. Y.). See NOTES, p. 219.

BANKRUPTCY — RIGHTS AND DUTIES OF BANKRUPT — EXAMINATION BEFORE ADJUDICATION. — After an involuntary petition in bankruptcy had been filed against the plaintiff, but before he was adjudicated bankrupt, a special reference was granted to the receiver, empowering him to examine the plaintiff. *Held*, that this examination is unauthorized. *Skubinsky* v. *Bodex*, 172 Fed. 332 (C. C. A., Third Circ.).

Section 21 a of the Bankruptcy Act of 1898 gives the court power to require the appearance before a referee of a bankrupt whose estate is "in process of administration." And the text writers agree that the acts of a receiver before adjudication are acts of administration. See COLLIER, BANKRUPTCY, 7 ed., 734. Moreover, the desirability of a prompt investigation into the affairs of a bankrupt is undoubted. Furthermore, the filing of a petition in bankruptcy gives to the court broad powers. BANKRUPTCY ACT OF 1898, §§ 2 (3), (15); 9 b. Yet the narrow interpretation of section 21 a given in the principal case, is supported by the latest decisions. *In re Davidson*, 158 Fed. 678; *In re Crenshaw*, 155 Fed. 271. But under a somewhat similar provision of the Act of 1867 an examination before adjudication was allowed. *In re Salkey*, Fed. Cas. No. 12,252. And since the law aims to have all of the bankrupt's property ascertained for the protection of creditors, the decision in the principal case seems wrong. *In re Fleischer*, 151 Fed. 81; *In re Herskovitz*, 152 Fed. 316.

BILLS AND NOTES — CHECKS — WHETHER RECEIPT OF CHECK DISCHARGES ORIGINAL OBLIGATION. — For several years the interest on the defendant company's debentures held by the plaintiff was paid by checks which were not cashed. On the failure of the defendant, the plaintiff claimed priority over the simple contract creditors as to the amount of the interest. *Held*, that the mere receipt of the checks does not prevent the plaintiff from ranking as a secured creditor. *In re Defries & Sons, Ltd.*, [1909] 2 Ch. 423.

In the absence of any express agreement to the contrary, the mere receipt of a check will not operate as a discharge of the original debt. *Taylor* v. *Wilson*, 11 Met. (Mass.) 44. An actual payment of the check is necessary. *Sage* v. *Burton*, 84 Hun (N. Y.) 267. This is especially true when there is a higher legal remedy on the original cause of action than on the check. *Davis* v. *Gyde*, 2 A. & E. 623. In the principal case, it would be unjust for the plaintiff to be forced to give up the security on the debentures, simply because the defendants mailed her a check. But the acceptance of a check implies an undertaking to present it for payment in a reasonable time, and if the failure to do so has caused the defendant any damage, the amount of the plaintiff's recovery should be reduced to that extent. *Brown* v. *Schintz*, 202 Ill. 509. If the defendant suffers no damage by reason of the plaintiff's laches, there is no set-off, and the burden of proving damage is on the defendant. *Bradford* v. *Fox*, 38 N. Y. 289.

CARRIERS — DUTY TO TRANSPORT AND DELIVER — DISCRIMINATION WITHIN A CLASS OF GOODS. — The defendant express company was accustomed to carry merchandise C. O. D., but refused to carry in that way liquor offered for ship-

ment by the plaintiff. *Held*, that the plaintiff is not entitled to a mandatory decree compelling the carriage of liquor C. O. D. *Burke* v. *Platt*, 172 Fed. 777 [Circ. Ct., N. D. W. Va.] See NOTES, p. 212.

CONFLICT OF LAWS — EXECUTION OF POWER — LAW GOVERNING VALIDITY OF EXECUTION BY WILL. — The donee under an English will of a power of appointment over personalty, to be exercised by deed or will, was domiciled in Germany at the time of her death. Her will, purporting to exercise the power, was duly attested according to the law of England, but was invalid according to German law. *Held*, that the document is admissible to probate in England for the purpose of the appointment. *Murphy* v. *Deichler*, [1909] A. C. 446.

In general, unless a will of movables is executed according to the law of the testator's domicile, it is nowhere valid. *Craigie* v. *Lewin*, 3 Curt. Eccl. 435; *Goods of Gutieres*, 20 L. T. N. S. 758. But the exercise of a power of appointment, unlike the disposition of property actually owned by the testator, is not a testamentary act. See *Pouey* v. *Hordern*, [1900] 1 Ch. 492. It is the completion of a gift which has its effect from the instrument creating the power. Therefore the intent of the creator of the power should determine the validity of a will purporting to exercise it. If he expresses certain requirements as to attestation, a will not complying is not a valid exercise of the power, although it is admissible to probate. *In re Kirwan's Trusts*, 25 Ch. 373; *Barretto* v. *Young*, [1900] 2 Ch. 339. Where the instrument creating the power simply provides that it is to be exercised by "will," it seems a natural construction to say that the intent of the testator will be satisfied either by a physical document purporting to be a will or by a legally operative testamentary disposition. Therefore a will executed according to the law of the donor's domicile satisfies the creator's intention under the former theory, or a will executed according to the law of the donee's domicile satisfies it under the latter. *D'Huart* v. *Harkness*, 34 Beav. 324; *In re Alexander*, 29 L. J. P. & M. 93. See 19 HARV. L. REV. 122. Thus the apparent anomaly of the principal case may be explained.

CONTEMPT — POWER TO PUNISH FOR CONTEMPT — IMPRISONMENT OF WARD OF COURT FOR DISOBEDIENCE. — An infant became married without the consent of a court of chancery of which he was a ward. *Held*, that he be imprisoned for contempt of court. *In re H's Settlement*, [1909] 2 Ch. 260.

The filing of a bill against an infant, or the payment into court of funds settled upon him, will constitute the infant a ward of the court. *In re Hodge's Settlement*, 3 K. & G. 213. And any interference with a ward's person or property, such as marrying him without the court's license, is a criminal contempt of court. *Butler* v. *Freeman*, 1 Ambl. 301; *Wellesley's Case*, 2 Russ. & M. 639. The court's direct control of a ward is usually exercised through an appointed guardian, whose commands the infant is under a duty to obey. *Tremain's Case*, 1 Str. 167. A ward's disobedience to the orders of a court, whether issued through the medium of a guardian or not, would be only a civil contempt of court. See 21 HARV. L. REV. 161. The case then is difficult to support. The imprisonment cannot be a punishment, for no crime has been committed; and the court is not attempting to enforce any order by imprisonment. It could be said that the jailer is made a guardian of the infant, but no contempt of court is necessary to authorize a change of guardians. In the United States, chancery has never interfered with the marriage of its wards. See *Chambers* v. *Perry*, 17 Ala. 726.

CORPORATIONS — NATURE OF CORPORATION — SEPARATE CORPORATE PERSONALITY. — Corporation A and corporation B were owned entirely by the same individuals. Corporation A became bankrupt and corporation B attempted to prove a claim against it. *Held*, that the claim is provable. *In re Watertown Paper Co.*, 22 Am. B. R. 190 (C. C. A., Second Circ.). See NOTES, p. 216.